

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MICHAEL J. LAWRENCE,)	
)	
Petitioner,)	
v.)	Case No. CIV-10-390-M
)	
JAMES RUDEK, WARDEN, <i>et al.</i> ,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, commenced this action by filing a “Petition to Vacate the Judgment” seeking relief relating to a state court judgment in Oklahoma County District Court in Case No. CF-84-4223. Although Plaintiff cites to Fed.R.Civ.P. 60(b) as a basis for his petition, Rule 60(b) pertains only to relief from a final judgment or order entered in a federal district court case. Therefore, liberally construing the Petition, the Court construes Petitioner’s action as one seeking habeas relief under 28 U.S.C. § 2254.

At the time of filing, Petitioner neither paid the required \$5 filing fee nor submitted a motion for leave to proceed *in forma pauperis*. On April 16, 2010, the Court issued an Order for Petitioner to cure this deficiency. On April 22, 2010, Petitioner submitted for filing a document entitled “In Forma Pauperis” [Doc. #5]. Petitioner’s document was not on the proper form for an *in forma pauperis* motion and lacked the required financial information and/or signature of an authorized officer from the state penal institution where he is currently

incarcerated. Consequently, an Order [Doc. #6] was entered on April 26, 2010, giving Petitioner until May 7, 2010, to cure the deficiencies.

On April 27, 2010 and April 30, 2010, Petitioner filed objections [Doc. ##7 and 8] to the Court's Order [Doc. #6] to cure deficiencies. On May 13, 2010, an Order was entered *sua sponte* giving Petitioner an extension of time until May 27, 2010, to cure the deficiencies.

In an entry dated May 14, 2010, the Court's docket indicates Petitioner filed a Petition for an Extradinary [sic] Writ on May 13, 2010, with the Tenth Circuit Court of Appeals [Case No. 10-6114]. In that filing, Petitioner argued that the district court orders arbitrarily imposed a filing fee which was unauthorized by Rule 60(b). On June 24, 2010, the Tenth Circuit issued an order and mandate dismissing the appeal for lack of prosecution.

In light of the Tenth Circuit's dismissal of Petitioner's appeal of the Court's previous orders, the Court entered a reminder order [Doc. #11] advising Petitioner that his *in forma pauperis* motion [Doc. #5] was not on the proper form and was missing financial information and/or the signature of an authorized officer of the penal institution. The Court gave Petitioner additional time until July 16, 2010, in which to cure his deficiencies or to voluntarily dismiss the action. Petitioner was advised that failure to comply may result in dismissal of the action without prejudice to refiling.

As of this date, Petitioner has not cured the deficiencies in his Application, paid the \$5 filing fee, sought an extension of time to do so or shown cause for his failure to comply with the Court's Orders. Under these circumstances, it is recommended that the action be dismissed without prejudice to the filing of a new action. *See* LCvR3.2 and 3.3.

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636 and Fed.R.Civ.P.72. Any such objections should be filed with the Clerk of the District Court by August 18th, 2010. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of the factual and legal issues addressed herein. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991).

STATUS OF REFERRAL

This Report and Recommendation disposes of all issues referred by the District Judge in this matter.

ENTERED this 28th day of July, 2010.



VALERIE K. COUCH
UNITED STATES MAGISTRATE JUDGE